IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 5TH JUNE 2007 / 15TH JYAISHTA 1929

Crl.Rev.Pet.No. 2520 of 2005()

CRA.7/2001 of III ADDL.SESSIONS COURT, KOLLAM
CC.1084/1998 of JUDL.MAGISTRATE OF FIRST CLASS-I, KOLLAM

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REVN. PETITIONER: APPELLANT/ACCUSED:

R. RAJAN,
CHARUVILA HOUSE, AMPALLATHUMKALA, EZHUKONE.

BY ADV. SRI.S.NIRMAL KUMAR

RESPONDENTS: RESPONDENT/STATE AND COMPLAINANT:

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1. THE STATE OF KERALA,
   REPRESENTED BY THE PUBLIC PROSECUTOR,
   ERNAKULAM.

2. S. SANKAR LAL,
   SANKAR LAL SADANAM, KANDRAMKANI,
   MONROE ISLAND, KOLLAM.

BY ADV. SRI.B.MOHANLAL
BY PUBLIC PROSECUTOR SRI.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 05/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R.UDAYABHANU, J

Crl.R.P.No.2520 of 2005

Dated this the 5th day of June, 2007

O R D E R

The revision petitioner stands convicted for the offence under Section 138 of the Negotiable Instruments Act and sentenced to undergo simple imprisonment for one month and to pay a fine of Rs.2,000/- to the complainant and in default, to undergo simple imprisonment for one month.

2. The prosecution case is that the accused borrowed a sum of Rs.25,000/- and issued the impugned cheque and when presented for encashment got dishonoured for want of funds in the account of the accused. The lawyer notice sent was not replied too. No amount was repaid. The evidence adduced in the matter consisted the testimony of PW1 and Exts. P1 to P4 (b). The defence examined DW1. It is the contention of the revision petitioner that only a sum of Rs.10,000/- was borrowed from one Advocate M.R.Thankappan and that the complainant is the clerk of the above Advocate and that he paid Rs.1,000/- to the complainant as commission. According to him, he has repaid

Rs.9,000/- to the said Advocate. To prove the same, he has examined DW1, the retired junior superintendent of the court. It is also contended that there is also material alteration in Ext.P1 cheque and hence, the same cannot be relied.

3. I find that the evidence of DW1 is not helpful to the case set by the accused as he has only stated about repayment of Rs.9,000/-. He has not seen the borrowal or execution of the cheque. PW1 has testified with respect to the execution of the cheque and payment of the amount. The fact that no reply notice was sent, is a circumstance that support the case of the complainant. On a perusal to Ext. P1 cheque, I find that the case of material alteration cannot be sustained. In the circumstances, I find no reason to deviate from the findings of the court below. Conviction is confirmed.

4. All the same considering the plea of the counsel for the revision petitioner, the sentence is modified to imprisonment till the rising of the court and to pay a compensation of Rs.25,000/- and in default, to undergo simple imprisonment for three months. It is submitted that a sum of Rs.10,000/- has been

deposited before the court below. The revision petitioner is granted two months' time to remit the balance. He shall appear before the Judicial First Class Magistrate Court-I, Kollam on 6.8.2007 to receive the sentence. The complainant is permitted to be withdraw the amount in deposit.

The criminal revision petition is disposed of as above.

K.R.UDAYABHANU,
JUDGE

csl